

ORDINANCE NO. __, SERIES 2008

AN ORDINANCE OF LOUISVILLE/JEFFERSON COUNTY METRO GOVERNMENT AUTHORIZING THE ISSUANCE AND SALE OF LOUISVILLE/JEFFERSON COUNTY METRO GOVERNMENT MORTGAGE REVENUE REFUNDING AND IMPROVEMENT BONDS, SERIES 2008A (UNIVERSITY OF LOUISVILLE PAPA JOHN'S CARDINAL STADIUM PROJECT) IN A PRINCIPAL AMOUNT NOT TO EXCEED \$45,500,000 AND LOUISVILLE/JEFFERSON COUNTY METRO GOVERNMENT MORTGAGE REVENUE BONDS, SERIES 2008B (UNIVERSITY OF LOUISVILLE PAPA JOHN'S CARDINAL STADIUM PROJECT) IN A PRINCIPAL AMOUNT NOT TO EXCEED \$48,500,000, THE PROCEEDS OF WHICH SHALL BE LOANED TO UNIVERSITY OF LOUISVILLE ATHLETIC ASSOCIATION, INC. TO FINANCE AND REFINANCE THE ACQUISITION, CONSTRUCTION, INSTALLATION, EXPANSION AND EQUIPMENT OF A SPORTS STADIUM AND RELATED FACILITIES; PROVIDING FOR THE PLEDGE OF REVENUES FOR THE PAYMENT OF SUCH BONDS; AUTHORIZING A LOAN AGREEMENT AND TRUST INDENTURE APPROPRIATE FOR THE PROTECTION AND DISPOSITION OF SUCH REVENUES AND TO FURTHER SECURE SUCH BONDS; AUTHORIZING A PRELIMINARY AND FINAL OFFICIAL STATEMENT; AND AUTHORIZING OTHER ACTIONS IN CONNECTION WITH THE ISSUANCE OF SUCH BONDS.

Sponsored By: Councilman Jim King

WHEREAS, Louisville/Jefferson County Metro Government, a consolidated local government and political subdivision of the Commonwealth of Kentucky (the "Issuer"), by virtue of the laws of the Commonwealth of Kentucky, including Chapter 67 and Sections 103.200 to 103.285 of the Kentucky Revised Statutes, as amended (collectively, the "Act"), is authorized and empowered among other things (a) to make a loan for financing or refinancing the costs of acquiring, constructing, installing, expanding and equipping an "industrial building", as defined in Section 103.200 of the Kentucky Revised Statutes, within the boundaries of the Issuer (b) to issue and sell its revenue bonds to provide moneys for such loan and (c) to enact this Ordinance and execute and deliver the agreements and instruments hereinafter identified; and

WHEREAS, the County of Jefferson, Kentucky (the "County") by virtue of the laws of the Commonwealth of Kentucky, including Chapters 58 and 67 of the Kentucky Revised Statutes, as amended, and by its Bond Ordinance 5, Series 1997, enacted and adopted on February 25, 1997, authorized the issuance of its Governmental Lease Revenue Bonds, Series 1997 (University of Louisville Cardinal Stadium Project) (the "Prior Bonds"), the proceeds of which financed the acquisition, construction, installation and equipping of a sports stadium and related facilities (the "Prior Project") for use by the University of Louisville (the "University"), a public body of the Commonwealth, and the Borrower, as hereinafter defined; and

WHEREAS, effective January 1, 2003, the County and the City of Louisville, Kentucky merged to form the Issuer and, by virtue of Section 67C.101(1) of the Kentucky Revised Statutes, the Issuer replaced and superseded the governments of the County and the City of Louisville, Kentucky; and

WHEREAS, the University of Louisville Athletic Association, Inc. (the "Borrower"), a Kentucky nonprofit corporation and an affiliated corporation of the University, has requested that the Issuer issue its bonds, pursuant to the Act, for the purpose of currently refunding the Prior Bonds and providing funds to finance the acquisition, construction, installation and equipping of an expansion to the Prior Project (the "New Money Project," and together with the Prior Project, the "Project"); and

WHEREAS, the Issuer is authorized under the Constitution and laws of the Commonwealth of Kentucky, including particularly the Act, to finance and refinance the Project, which is comprised of facilities to be used in furtherance of the educational purposes of the Borrower and the University;

WHEREAS, the Issuer proposes to issue its Louisville/Jefferson County Metro Government Mortgage Revenue Refunding and Improvement Bonds, Series 2008A (University of Louisville Papa John's Cardinal Stadium Project) in a principal amount not to exceed \$45,500,000 (the "Series A Bonds") and Louisville/Jefferson County Metro Government Mortgage Revenue Bonds, Series 2008B (University of Louisville Papa John's Cardinal Stadium Project) in a principal amount not to exceed \$48,500,000 (the "Series B Bonds," and together with the Series A Bonds, the "Bonds") in order to provide funds to currently refund the Prior Bonds and provide funds for the acquisition, construction, installation and equipping of the New Money Project.

NOW, THEREFORE, BE IT ORDAINED BY THE LEGISLATIVE COUNCIL OF THE LOUISVILLE/JEFFERSON COUNTY METRO GOVERNMENT (THE "COUNCIL"), AS FOLLOWS:

Section 1. Definitions. All defined terms used herein and those not otherwise defined herein shall have the respective meanings given to them in the Trust Indenture dated as of July 1, 2008 with respect to the Bonds (the "Indenture") between the Issuer and U.S. Bank National Association, and its successors in trust, as trustee (the "Trustee").

Any reference herein to the Issuer or the Council, or to any officers or members thereof, shall include those which succeed to their functions, duties or responsibilities pursuant to or by operation of law or who are lawfully performing their functions.

Unless the context shall otherwise indicate, words importing the singular number shall include the plural number, and vice versa, and the terms "hereof," "hereby," "hereto," "hereunder," and similar terms, mean this Ordinance.

Section 2. Determinations of Council; Approval and Authorization of Issuance of Bonds. Pursuant to the Act, this Council hereby finds and determines that the Project constitutes an "industrial building" as defined in the Act and is consistent with the provisions of the Act; that such Project consists of "industrial buildings" suitable for use in furtherance of the educational purposes of the Borrower and the University, as set forth in Sections 103.200(1)(d) of the Act; and that such industrial buildings are to be acquired, constructed, installed and equipped, financed and refinanced with the proceeds of the Bonds pursuant to the provisions of the Act.

The Council, as the "applicable elected representative" of the Issuer for purposes of Section 147(f) of the Code, hereby approves the issuance of the Bonds in the maximum

aggregate principal amount of \$94,000,000, the proceeds of which will be loaned to the Borrower and used to finance and refinance that portion of the Project described as follows:

The Project consists of the acquisition, construction, installation, expansion and equipping of a sports stadium and related facilities known as Papa John's Cardinal Stadium located on the Belknap campus of the University of Louisville for use in furtherance of the educational purposes of University of Louisville Athletic Association, Inc., a Kentucky nonprofit corporation, and the University of Louisville, a public body.

It is hereby determined to be necessary to, and the Issuer shall, issue, sell and deliver, as provided herein and pursuant to the authority of the Act, the Bonds for the purposes of financing and refinancing the Project, and to pay expenses related to such issuance, all in accordance with the provisions of the Indenture and the Loan Agreement dated as of July 1, 2008 (the "Loan Agreement") between the Issuer and the Borrower. The Series A Bonds shall be designated "Louisville/Jefferson County Metro Government Mortgage Revenue Refunding and Improvement Bonds, Series 2008A (University of Louisville Papa John's Cardinal Stadium Project)" and shall be issued in the maximum aggregate principal amount of \$45,500,000. The Series B Bonds shall be designated "Louisville/Jefferson County Metro Government Mortgage Revenue Bonds, Series 2008B (University of Louisville Papa John's Cardinal Stadium Project)" and shall be issued in the maximum aggregate principal amount of \$48,500,000.

Section 3. Terms and Execution of the Bonds. The Bonds shall be issued in the forms and denominations, shall be numbered, dated and payable as provided in the Indenture. The Bonds shall mature as provided in the Indenture, and have such terms, bear such interest, and be subject to mandatory and optional redemption as provided in the Indenture. This Council hereby fixes and establishes the interest rate on the Bonds in the manner and pursuant to the provisions of the Indenture. The Bonds shall be executed on behalf of the Issuer by the manual or facsimile signature of its Mayor and Clerk. In case any officer whose signature or a facsimile thereof shall appear on the Bonds shall cease to be such officer before the issuance or delivery of the Bonds, such signature or facsimile thereof shall nevertheless be valid and sufficient for all purposes, the same as if the officer had remained in office until after that time.

The form of the Bonds submitted to this meeting, subject to appropriate insertions and revisions in order to comply with the provisions of the Indenture, is hereby approved, and when the same shall be executed on behalf of the Issuer by the appropriate officers thereof in the manner contemplated hereby and by the Indenture, in an aggregate principal amount not to exceed \$93,500,000, shall represent the approved form of Bonds of the Issuer.

Section 4. Sale of the Bonds; Official Statement. The Bonds shall be offered publicly for sale upon the basis of competitive bids at such time as the Chief Financial Officer of the Issuer, upon advice of J.J.B. Hilliard, W.L. Lyons, LLC (the "Financial Advisor"), shall designate.

There are hereby authorized and directed to be prepared appropriate form or forms of a Notice of Sale of Bonds to be published in *The Courier Journal*, a legal newspaper published in the City of Louisville, Kentucky, which will afford local and statewide notice of the sale, and, to the extent required by law, in *The Bond Buyer*, a financial journal published in the City of New

York, New York, which is a publication having general circulation among bond buyers; and said newspapers and financial journal are hereby declared to be qualified to publish such notice for the Issuer within the meaning and provisions of Chapter 424 of the Kentucky Revised Statutes. Such notice shall be published in said newspapers and financial journal at least once not less than seven nor more than twenty-one days prior to the scheduled date of sale of the Bonds.

There are further directed to be prepared appropriate forms of Official Terms and Conditions of Sale of Bonds, Bid Form and Preliminary Official Statement and the use thereof by the Financial Advisor in offering the Bonds for sale is approved. The Mayor and Clerk are directed to cause to be prepared a Final Official Statement in substantially the form of the Preliminary Official Statement and to execute and deliver such Final Official Statement with any changes from the Preliminary Official Statement as may be approved by the Mayor, his execution thereof constituting conclusive evidence of approval of such changes.

Upon the date and at the respective hour set forth for the submission and consideration of purchase bids, as provided in the instruments hereinabove approved, bids shall be reviewed as provided in such instruments. If there shall be one or more bids which conform in all respects to the prescribed terms and conditions, such bids shall be compared, and the Chief Financial Officer, upon the advice of the Financial Advisor, is authorized to accept the best of such bids, as measured in terms of the lowest net interest cost, as calculated in the manner prescribed in the Official Terms and Conditions of Sale of Bonds. Calculations shall be performed as are necessary to determine the exact amount of Series A Bonds and Series B Bonds that are required to be issued in order to (i) currently refund the Prior Bonds, (ii) pay the budgeted costs of the New Money Project, (iii) fund a debt service reserve fund for the Bonds and (iv) pay the costs of issuing the Bonds and the final principal amount, interest rates and maturities of the A Bonds shall thereupon be established, as prescribed in the Official Terms and Conditions of Sale of Bonds.

Section 5. Arbitrage Provisions. The Issuer will restrict the use of the proceeds of the Series A Bonds in such manner and to such extent, if any, as may be necessary, after taking into account reasonable expectations at the time the Bonds are delivered to the Underwriter, so that they will not constitute arbitrage bonds under Section 148 of the Code. The Mayor or any other officer having responsibility with respect to the issuance of the Bonds, is authorized and directed, alone or in conjunction with any of the foregoing or with any other officer, employee, consultant or agent of the Issuer, to deliver a certificate for inclusion in the transcript of proceedings for the Bonds, setting forth the facts, estimates and circumstances and reasonable expectations pertaining to said Section 148 and regulations thereunder.

Section 6. Authorization of Indenture, Loan Agreement and All Other Documents to be Executed by the Issuer. In order to better secure the payment of the principal of, premium, if any, and interest on the Bonds as the same shall become due and payable, the Mayor and Clerk are authorized and directed to execute, acknowledge and deliver in the name and on behalf of the Issuer, the Indenture and Loan Agreement in substantially the forms submitted to the Issuer and attached hereto as Exhibits A and B, respectively, which are hereby approved, with such changes therein not inconsistent with this Ordinance and not substantially adverse to the Issuer as may be permitted by the Act and approved by the officers executing the same on behalf of the Issuer. The approval of such changes by said officers, and that such are not substantially adverse to the

Issuer, shall be conclusively evidenced by the execution of such Indenture and Loan Agreement by such officers.

The Mayor and Clerk are each hereby separately authorized to take any and all actions and to execute such financing statements, assignments, certificates and other instruments that may be necessary or appropriate in the opinion of Peck, Shaffer & Williams LLP, as Bond Counsel, in order to affect the issuance of the Bonds and the intent of this Ordinance. The Clerk, or other appropriate officer of the Issuer, shall certify a true transcript of all proceedings had with respect to the issuance of the Bonds, along with such information from the records of the Issuer as is necessary to determine the regularity and validity of the issuance of the Bonds.

Section 7. Covenants of Issuer. In addition to other covenants of the Issuer in this Ordinance, the Issuer further covenants and agrees as follows:

(a) Payment of Principal, Premium and Interest. The Issuer will, solely from the sources herein or in the Indenture provided, pay or cause to be paid the principal of, premium, if any, and interest on each and all Bonds on the dates, at the places and in the manner provided herein, in the Indenture and in the Bonds. **The Bonds do not constitute an indebtedness of the Issuer within the meaning of the Constitution or laws of the Commonwealth of Kentucky. The Bonds shall be payable solely from the revenues and security interests pledged for their payment as provided in the Indenture, and neither moneys raised by taxation nor any other general or special revenues of the Issuer shall be obligated or pledged for the payment of principal of, premium (if any) or interest on the Bonds.**

(b) Performance of Covenants, Authority and Actions. The Issuer will at all times faithfully observe and perform all agreements, covenants, undertakings, stipulations and provisions contained in the Bonds, the Indenture and the Loan Agreement, and in all proceedings of the Issuer pertaining to the Bonds. The Issuer warrants and covenants that it is, and upon delivery of the Bonds will be, duly authorized by the laws of the Commonwealth of Kentucky, including particularly and without limitation the Act, to issue the Bonds and to execute the Indenture, the Loan Agreement and all other documents to be executed by it, to provide for the security for payment of the principal of, premium, if any, and interest on the Bonds in the manner and to the extent herein and in the Indenture set forth; that all actions on its part for the issuance of the Bonds and execution and delivery of the Indenture, the Loan Agreement and all other documents to be executed by it in connection with the issuance of the Bonds, have been or will be duly and effectively taken; and that the Bonds will be valid and enforceable special obligations of the Issuer according to the terms thereof. Each provision of the Ordinance, the Indenture, Loan Agreement and each Bond, and all other documents to be executed by the Issuer in connection with the issuance of the Bonds, is binding upon each officer of the Issuer as may from time to time have the authority under law to take such actions as may be necessary to perform all or any part of the duty required by such provision; and each duty of the Issuer and of its officers and employees undertaken pursuant to such proceedings for the Bonds is established as a duty of the Issuer and of each such officer and employee having authority to perform such duty.

Section 8. No Personal Liability. No recourse under or upon any obligation, covenant, acceptance or agreement contained in this Ordinance, or in any Bond, or in the Indenture or Loan Agreement, or under any judgment obtained against the Issuer or by the

enforcement of any assessment or by any legal or equitable proceeding by virtue of any constitution or statute or otherwise, or under any circumstances, shall be had against any officer as such, past, present, or future, of the Issuer, either directly or through the Issuer, or otherwise, for the payment for or to the Issuer or any receiver thereof, or for or to any holder of any Bond, or otherwise, of any sum that may be due and unpaid by the Issuer upon any of the Bonds. Any and all personal liability of every nature, whether at common law or in equity, or by statute or by constitution or otherwise, of any such officer, as such, to respond by reason of any act or omission on his or her part, or otherwise, for, directly or indirectly, the payment for or to the Issuer or any receiver thereof, or for or to the owner or any holder of any Bond, or otherwise, of any sum that may remain due and unpaid upon any Bond, shall be deemed to be expressly waived and released as a condition of and consideration for the execution and delivery of the Indenture and the Loan Agreement and the issuance of the Bonds.

Section 9. **No Debt or Tax Pledge.** The Bonds do not constitute an indebtedness of the Issuer within the meaning of the Constitution or laws of the Commonwealth of Kentucky. The Bonds shall be payable solely from the revenues and security interests pledged for their payment as provided in the Indenture, and neither moneys raised by taxation nor any other general or special revenues of the Issuer shall be obligated or pledged for the payment of principal of, premium (if any) or interest on the Bonds.

Section 10. **Severability.** If any section, paragraph or provision of this Ordinance shall be held to be invalid or unenforceable for any reason, the invalidity or unenforceability of such section, paragraph or provision shall not affect any of the remaining provisions of this Ordinance.

Section 11. **Open Meetings Law.** This Council hereby finds and determines that all formal actions relative to the adoption of this Ordinance were taken in an open meeting of this Council, and that all deliberations of this Council and of its committees, if any, which resulted in formal action, were in meetings open to the public, in full compliance with applicable legal requirements.

Section 12. **Effective Date.** This Ordinance shall be in full force and effect from and after its enactment and publication of a summary hereof, as provided by law.

This Ordinance was given first reading at a duly convened meeting of the Legislative Council of the Louisville/Jefferson County Metro Government, held on the ____ day of June, 2008, and given second reading approval and enacted at a duly convened meeting of the Legislative Council held on the ____ day of July, 2008.

Jerry E. Abramson
Mayor

Jim King
President of the Council

Kathleen J. Herron
Metro Council Clerk

Approval Date

APPROVED AS TO FORM AND LEGALITY:

Irv Maze
Jefferson County Attorney

By: _____
James T. Carey
Assistant County Attorney

CERTIFICATE OF THE CLERK

I, Kathleen J. Herron, Metro Council Clerk, hereby certify that I am the duly qualified and acting Metro Council Clerk of the Louisville/Jefferson County Metro Government, that the foregoing Ordinance is a true copy of said Ordinance duly enacted by the Metro Council of said Metro Government, signed by the Mayor and President of the Council of said Metro Government, and attested under seal by me as Metro Council Clerk of the Metro Government, at a properly convened term and session of said Metro Council held on _____, 2008 as shown by the official records in my custody and under my control; that attached hereto are true copies of the documents approved therein, and that copies of such documents have also been duly filed and recorded in the official records of the Metro Government.

IN WITNESS WHEREOF, I have hereunder set my hand as Metro Council Clerk of the Louisville/Jefferson County Metro Government and the seal of the Metro Government this ____ day of _____, 2008.

Metro Council Clerk

[SEAL]

40822\1.DOC

EXHIBIT A
FORM OF INDENTURE

EXHIBIT B
FORM OF LOAN AGREEMENT

40822.3